

SOUTH BROOKLYN LEGAL SERVICES

Foreclosure Prevention Project

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April 6, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219
email: regs.comments@occ.treas.gov

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
email: regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
email: comments@fdic.gov

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, D.C. 20552
email: regs.comments@ots.treas.gov

Dear Officials of Federal Bank and Thrift Agencies:

Our office, South Brooklyn Legal Services' Foreclosure Prevention Project, is a comprehensive outreach, education, and legal services delivery program for low-and moderate-income homeowners who are at risk of foreclosure as a result of predatory mortgage lending practices. The Foreclosure Prevention Project is the primary resource in New York City and State for legal expertise on predatory lending issues, and regularly conducts policy analyses and advocacy concerning national lending abuses. In response

to your requests for comments, we urge your agencies not to implement the proposed changes. Taken as a whole, we regard the proposal as contrary to the CRA.

Our comments address each of the following three proposed regulatory changes:

- A doubling of the definition of “small bank” from \$250 million to \$500 million;
- A provision that evidence of abusive lending by the bank, and possibly its affiliates, could adversely affect the bank’s CRA evaluation; and
- Improved disclosure of small business lending data, by calling for public disclosure of census tracts in which banks make small business loans, and a distinction between loans purchased and loans originated by a bank.

NEW SMALL BANK DEFINITION WOULD UNDERMINE THE CRA

The proposed change to the small bank definition would constitute further erosion of the CRA, by eliminating investment and service parts of the CRA exam for approximately 1,100 banks and thrifts that fall above the current \$250 million threshold. This change could have seriously negative consequences for communities throughout the country. More than a thousand banks and thrifts would no longer be held accountable under CRA for investing in Low Income Housing Tax Credits, for example, which have been a major source of affordable rental housing. Likewise, the banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services.

The agencies set forth in their preamble several explanations for the proposed new small bank definition. These explanations focus on reducing CRA’s burden to banks that fall just above the current definition but must compete with considerably larger institutions. We question this rationale, among other reasons, given the very purpose of the performance context, which ostensibly takes all these considerations into account.

PREDATORY LENDING STANDARD

We applaud the agencies for addressing abusive mortgage lending under the proposed CRA amendments. As all of the federal banking agencies know, predatory lending has become a pervasive problem in too many low income communities and neighborhoods of color, throughout the country. It not only devastates homeowners’ lives but also harms entire communities, and we agree with your agencies that it is appropriate to apply CRA standards in this realm.

The standards proposed, however, strike a group like ours, which has been working for years to combat predatory lending, as simply inadequate. We are concerned it could effectively give cover to banks and their affiliates that actually engage in abusive lending but not necessarily in ways described in the regulation.

If the agencies were serious about cracking down on predatory lending, they would not propose such weak standards. Also, as a matter of public policy, we see no reason why

the regulators would not automatically reduce a CRA rating based upon a finding that the bank or its affiliates engaged in discriminatory or abusive lending, particularly where regulators find a pattern and practice thereof. From one point of view, predatory lending is the moral opposite of CRA lending.

As our colleagues have commented, the proposed CRA changes contain an anti-predatory screen that could actually perpetuate abusive lending. That is, the standard of unaffordability for collateral-based loans is itself problematic, as it would apply only when the loan has led to delinquency or foreclosure. We recognize the affordability standard is cited as an example, but the proposal fails to take into account a long list of predatory and abusive practices that strip homeowners' equity, such as excessive fees, high prepayment penalties, loan flipping, or junk products.

We urge the agencies to apply any anti-predatory lending standard to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area," as currently proposed.

ENHANCED DATA DISCLOSURE

We generally support the proposed disclosure of census tracts in which a bank makes or purchases small business loans. Indeed, the small business lending data now disclosed under CRA is notoriously limited and opaque. It is extremely difficult for the public to use the data to evaluate whether banks are serving small businesses in historically underserved neighborhoods.

Although we support the additional disclosure item, we do not believe that it cures the many limitations that characterize small business lending disclosure under CRA. We would encourage the regulators to include standards for using the new data in CRA exams, and to afford greater weight to small business loans originated than to those purchased.

Despite the value of enhanced small business lending data disclosure, the Foreclosure Prevention Project at South Brooklyn Legal Services urges the regulators to withdraw their proposal. We regret that the agencies also failed to take the opportunity to close gaping loopholes in the CRA regulation. Banks may still elect to include affiliates on CRA exams at their option, and can thereby continue to manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and affiliates engaged in predatory lending. We continue to urge the regulators to require that all affiliates be included in CRA exams. Finally, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches.

Sincerely yours,

Josh Zinner, Project Coordinator
Foreclosure Prevention Project